

## May 15, 2013 City Council Minutes

Minutes of the Payson City Council Meeting held at the Payson City Center, 439 West Utah Avenue, Payson, Utah on Wednesday, May 15, 2013 at 6:00 p.m.

ROLL CALL: Mayor Rick Moore; Councilmembers: JoLynn Ford, Kim Hancock, Mike Hardy, and Scott Phillips; City Manager Dave Tuckett, City Attorney Mark Sorenson, and City Recorder Jeanette Wineteer. Councilmember Skinner excused.

Mayor Rick Moore presiding.

### PRAYER & PLEDGE OF ALLEGIANCE

Prayer offered by City Engineer Glade Robbins and Pledge of Allegiance led by Rhett Huff member of Payson Lions Club.

### CONSENT AGENDA

MOTION by Councilmember Hardy to approve the Consent Agenda consisting of: approval of May 1, 2013 Payson City Council Minutes, and approval of Payson West Meadows Annexation Ordinance. Motion seconded by Councilmember Phillips. Motion carries.

### PUBLIC FORUM

Howard Christensen and Debra Carter members of the Nebo Philharmonic Orchestra introduced themselves and said that the Orchestra has been in existence for about 6 years. They have held 3-4 concerts each year between Nephi and Springville, but have performed at the Salt Lake Tabernacle also. Their music is classical and light classical and they are having a concert on June 8<sup>th</sup> at Peteetneet beginning at 4 p.m. They asked that the City consider them when scheduling the city events.

Shawna Crouse introduced herself as the Administrator for the new Veterans Facility in Payson and thanked everyone in Payson for the nice welcome they have received. They are in the process of hiring staff and their public dedication is scheduled for June 6<sup>th</sup> at 1:00 p.m.

### COUNCIL AND STAFF REPORTS

Karl Teemant reported:

- The lap pool passed inspection and the first event will be held tomorrow for the Payson Jr. High.
- The leisure pool inspection will be tomorrow, so they are getting close to being ready to open. The schools will be coming in next week depending on the passing of the inspection.
- Youth baseball and softball programs are going well.
- They are still taking registration for tennis.
- The first home track meet is being held today.

Manager Tuckett thanked the employees and community for the successful event held last night honoring our champions; Kaycee and Lewis Feild, Wes Silcox, World PRCA Rodeo Champions and Troy Lerwill for Entertainment. He plans to gather all the figures and give the Council a detailed accounting of the event, but we are proposing to donate \$1000 to America 300 (the Non-Profit Organization that Kaycee supports). He said that there would be a "thank you" luncheon tomorrow for everyone that was involved in pulling off this event.

Planner Spencer said Mountainland Association of Governments has finished the trails and bikeways map for all of Utah County and she presented copies of the map.

Councilmember Phillips said there is a contract amount for the 930 West project; however they have found a lot of clay and have had to use some import so the price will go up a little.

Councilmember Ford said we had a citizen write in about a dangerous situation, and we are on it getting it repaired. She said that we really appreciate those types of things brought to our attention.

Councilmember Hardy reminded everyone of the Nebo Economic Summit on June 13<sup>th</sup> at Payson High, and said there will be some great speakers.

He noted that we have Kaycee Field on the Chamber billboard coming into town.

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He said the Kiwanis Club golf scholarship tournament will be held on June 7<sup>th</sup> and would like to see a golf team from the city.

Mayor Moore stressed water conservation this year.

He thanked everyone that participated in the auction last night. We didn't have as many attend as we were hoping but it really went well. The sculpture is really nice and they are excited about working with them for items in the cowboy museum.

He said we are also working to get a cover on the Petetneet amphitheater, specifically before the concert next August.

He and Councilmember Phillips will be attending the ICSC Conference soon.

### PLEASANT GROVE ROYALTY

Miss Pleasant Grove and 4 attendants introduced themselves and invited everyone to Pleasant Grove Strawberry Days June 17<sup>th</sup> – 22<sup>nd</sup> and described their many different events. The Pleasant Grove Rodeo Royalty also introduced themselves and said that the Rodeo will be held June 19<sup>th</sup> – 22<sup>nd</sup> at 8 p.m. with fireworks after the rodeo and a moto-cross for the ½ time entertainment. Then they all presented strawberry cheesecake to the Council.

### PUBLIC HEARING – REQUEST FOR APPROVAL TO AMEND SECTIONS OF TITLE 19, ZONING ORDINANCE

MOTION by Councilmember Ford to open a public hearing to receive input regarding a request to amend sections of Title 19 Zoning Ordinance. Motion seconded by Councilmember Hardy. Motion carries.

Public hearing opened at 6:25 p.m.

Planner Spencer presented the following staff report:

In accordance with Section 19.2.8 of the Payson City Zoning Ordinance (February 20, 2013), the applicant, Elizabeth Fullmer, is requesting approval from the City Council to amend sections of Title 19, Zoning Ordinance to clarify the home occupation regulations in non-residential zones and to allow retail sales within a home occupation business.

The applicant owns the parcel located at 165 S. Main Street in the CC-1, Central Commercial Zone. There is an existing single family dwelling on the site and the remaining portions of the parcel contain typical residential improvements. Because the parcel is located in a commercial zone, the residential use, as a single family dwelling, is non-conforming which limits the expansion of residential uses. In accordance with Chapter 19.14, Non-Conforming Uses of the Zoning Ordinance, a use that legally existed prior to a change in the land use regulations (i.e. zoning district) may continue as a non-conforming use unless the structure is vacated or the use is ceased for a continuous period in excess of one (1) year.

The applicant resides in the dwelling and would like to conduct a retail business in a portion of the structure. The applicant owns Legion Custom Shop, a business that specializes in skateboards, long boards and snow boards along with product customization and airbrush artwork. Retail uses in the CC-1 Zone within structures that contain residential uses are rare, although not unique. Second story and basement residential uses are an allowed use (with approval of an overlay zone) in the zone, but are physically separated and on different stories of the structure. The current proposal presents two distinct inconsistencies with the provisions of the Zoning Ordinance.

As currently adopted, the Zoning Ordinance does not contemplate home occupation businesses in non-residential zones (commercial and industrial) because structures that would accommodate single family dwelling are not permitted in those areas. Secondly, because home occupations typically occur in residential zones, retail sales are not currently allowed in association with home occupations. Therefore, staff is unable to approve the request unless the provisions of the ordinance are modified by the City Council.

Approval of a text amendment requires a recommendation from the Planning Commission, following a public hearing, and approval by the City Council, again following a public hearing. Prior to forwarding a recommendation to the City Council, the Planning Commission held a public hearing to obtain input on the proposed ordinance amendment. Their recommendation is included in the recommendation portion of this staff report. Because an amendment to the Zoning Ordinance affects many parcels rather than just the property owned by the applicant, mailing notice to all property owners potentially affected by these amendments is impractical. However, in accordance with State statute, notice of the public hearing has been posted in appropriate locations and the public hearing was advertised in the newspaper for a minimum of fourteen (14) days.

Amendments to the Zoning Ordinance are legislative decisions and significant discretion is given to the City Council which is not obligated to approve the request. As a final note, it is important to recognize that an amendment is not specific to the request, but rather is applied in a comprehensive nature to all properties in the zoning district. Although there is a tendency to limit consideration to the request of the applicant, the impact of an amendment is farther reaching.

### **Analysis**

As noted, once an amendment has been approved by the City Council, the provisions may be applied to all applicable parcels throughout the zone or the community, as predicated in the revised ordinance. In this instance, the application includes amendments to Chapter 19.16 of the Zoning Ordinance to allow retail sales for home occupations within a non-conforming residential structure, but retain the necessary protections to avoid inappropriate retail sales in residential areas. The issues pertaining to allowable uses in the CC-1 Zone and regulation of home occupations warrant independent consideration; therefore, the analysis portion of this staff report has been divided into two sections to properly address each item.

#### *Home Occupations in Non-Residential Zones*

As currently adopted, the regulations of Chapter 19.16, Home Occupations do not contemplate home occupations within structures in non-residential zones, because single family dwelling are not allowed in those districts. Regulations have been established that provide minimum standards for establishment and operation of home occupations within residential zones, but not in the commercial and industrial zones of the city. The applicant's request is unique because the residential use is a non-conforming use in a commercial zone. Obviously, without amendment, the application would be denied because the structure is located in a commercial district. Even though the commercial zones were created to provide areas in the community for commercial uses and retail trade, when the districts were approved, there were a number of residential dwellings within the confines of the zone. It is contemplated that over time, the non-conforming uses will be eliminated and replaced with conforming, commercial structures.

#### *Retail Sales Associated with Home Occupations*

The provisions of Chapter 19.16 were created to allow home occupations in residential areas in a manner that does not negatively impact residential uses or affect the residential atmosphere of the neighborhood. Payson City supports a variety of business activities in the community. The very essence of the Zoning Ordinance is to allow the Planning Commission and City Council to determine the appropriate location for these uses. Commercial uses necessitate off-street parking, safety lighting, loading and unloading, hours of operation, signage and many other uses incompatible with residential uses. Careful consideration needs to be taken to avoid making any modification that would inadvertently impact residential neighborhoods.

Before purchasing this property, the applicant was operating Legion Custom Shop in a commercial structure also located in the CC-1 Zone. The business was a permitted use in a commercial zone and operated in compliance with City ordinance. As indicated in the application materials, the applicant would like to operate the business as a home occupation in an existing single family dwelling located in a commercial zone. The applicant recognizes the concern with allowing retail sales in a residential setting. Therefore, the application is suggesting the amendment be limited to non-conforming residential uses in the CC-1 Zone.

Staff has explored numerous options to assist the applicant, including the use of the AD-O, Accessory Dwelling Overlay Zone which would accommodate mixed use development. Use of the overlay zone would require the commercial and residential uses to be completely separated, with commercial on the main level and the residential uses on the second story of the structure. The applicant has indicated this is impracticable with the floor plan of the dwelling and the location of essential facilities such as the kitchen and heating source being located on the main floor. Moreover, the applicant does not need the entire main level to conduct business.

In summary, the applicant is seeking amendments that would allow retail sales in home occupations within non-conforming uses in the CC-1, Central Commercial Zone. The City Council is under no obligation to approve the request. It is the burden of the applicant to demonstrate to the City Council that the proposed text amendment would be beneficial to the applicable areas of the community.

### **Recommendation**

Development regulations are enacted to ensure that all property owners are treated equitably and to protect the health, safety, and general welfare of the residents. It is important to reiterate that amending the Zoning Ordinance will affect a number of parcels throughout the community, not just the subject property. Therefore, review of the applicant's request should be expanded to how these regulations would affect other parcels located in non-residential zoning districts.

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The Planning Commission conducted a public hearing on March 27, 2013. Following discussion regarding the request, the item was remanded back to staff with direction to prepare ordinance amendments for consideration by the Planning Commission and City Council. On April 24, 2013, the Planning Commission recommended approval of the proposed amendments and to include an appeals process for the provisions of the Chapter.

Councilmember Hardy clarified what areas and zones would be affected by this amendment and wondered if we wouldn't be opening ourselves up to more problems. Planner Spencer said this is a nonconforming residential space in a commercial zone and they have a home occupation permit.

Elizabeth Fullmer said she submitted the application and wants to start up the business, hopefully grow, but doesn't want the business in her home forever. They want to keep it as their home and have it look like their home. She doesn't feel there will be a negative effect on the neighborhood because the people in the area already have adjusted to businesses there.

Councilmember Hardy complimented Ms. Fullmer for what she has written that is included in the Council packet.

Recreation Director Karl Teemant complimented Legion Bike Shop and the Fullmer's with their involvement in the community events that we have had in our community. Their business has been very friendly and a great support to our community.

Nancy Jones lives in the neighborhood and is personally associated with the Fullmer's and wanted to commend them for the efforts they are making to improve Payson in general, and the opportunity they provide and positive influence they give to the group of individuals that might be headed down a wrong path. She would like to see the city support their plans.

Justin Footit said that the Fullmer's are a wonderful couple that clearly has the best interest of the youth in their hearts. He hopes that their business will grow and they can branch out to other communities and give the support that is needed in other areas also.

Lee Ferns said he considers himself to be one of the success stories that the Fullmer's have influenced and has become a better person. They have influenced and turned lives around from a horrible path through the Legion skate shop.

Gerald Buffum said he is also a success story, thanks to the Fullmer's.

Aaron Haywood said he grew up in Payson and knows there are not a lot of things to do for the youth and feels this is a very positive environment for youth. He also asked the City to support the Fullmer's plans.

Kristy Footit lives in Provo and misses having the Fullmer's in her area, so it will be a benefit for Payson to have them here.

Jesse said he is a skater from Salem and could talk for days and days about what a great influence the Fullmer's have been for him. Skaters know things wear out and wear out quick, and he showed examples of shoes and broken boards and said it is so nice to have a shop close to the skate park. We love their shop and their prices, and he loves the Fullmer's and Legions.

John Fullmer is from Spanish Fork and a cousin of Ryan, but said he is one of the only 40 year olds that skate the Payson Skate Park. He said not all kids play soccer or baseball, they like to skate or ski, and that is what he and his family enjoy. He is very happy Payson has the park and hopefully will allow Legions.

Ryan Fullmer said you have heard a lot of people explain him and his wife's character, and that their request is not based on whether the city wants a shop here. He said they want the American dream, moved to Payson and found their home on Main Street and didn't realize there would be an issue of having their shop there and they were honestly surprised when there was. Their goal is to be a little jewel in the middle of Payson Main Street.

Rhett Huff said he is a small business owner here in Payson too, and to hear all the wonderful things Fullmers are doing in the community is a wonderful thing. He feels we should encourage more small businesses, and should be asking what the city can do to help these businesses.

Ben Hakes from Spanish Fork said he has known Ryan Fullmer for about 4 years. He is also a small business owner (Haleflax Flooring) in Orem and some of the reasons he moved his business from Payson where he started it, was because it

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was difficult to have a small business in Payson. Businesses thrive in a community that helps small businesses. When asked, he explained that business licenses were more difficult to obtain here.

Summer Knots is also a small business owner and a resident of Payson and could also echo what has been said about the Fullmer's character and integrity, but wanted to speak as a resident and said she wouldn't be concerned at all about allowing this amendment change it is not going to disrupt neighborhoods or be a traffic hazard.

Susan Thompson lives next to the Bible Church and Fullmer's and doesn't feel there will be a negative impact on anything. She asked to please not take Legion away.

Melanie Thompson said she is a long boarder here in Payson and Legion is a neighbor and she just loves Legion.

Receiving no further input MOTION by Councilmember Phillips to close the public hearing. Motion seconded by Councilmember Hardy. Motion carries.

Public hearing closed at 7:10 p.m.

Councilmember Hardy thanked everyone for the time it took to come here tonight and express their views. Having said he feels there are some things that need to be pointed out. What we do here is going to affect businesses throughout the community. This is not about what kind of business or people they are, we need to talk about all businesses this ordinance change will affect. He said he doesn't have a problem with this in just the CC-1 zone but didn't know if he wanted to include all commercial zones.

Councilmember Hancock likes to hear different points of view before making decisions, and over the past while, he has been able to watch this amendment develop. The Council faces the exact opposite in this situation. Everyone residential has the right to have a small business in their home unless you live in a commercial zone and in which case you don't have that right. So instead of an ordinance that imposes on all zones we are trying to write an amendment to allow what other residents can have in a commercial zone. It is only going to affect residences that are there in that zone. So he feels we are just trying to even everything up.

Councilmember Ford suggested that we could just restrict the change to the historic area or the CC-1 zone. That area is non-conforming in various levels anyway. She even suggested a probation period or a time line.

MOTION by Councilmember Phillips to approve the amendments to Title 19, Zoning Ordinance as proposed and recommended by the Planning Commission. Motion seconded by Councilmember Hancock. Motion carries.

Councilmember Ford encouraged everyone to not skate in the schools or down the middle of the road.

Planner Spencer noted that an ordinance was not prepared for tonight's meeting, so she will get that and have it on the Consent Agenda for the next Council Meeting.

### AMENDMENTS TO PLAT A AND PLAT B OF THE HERITAGE VILLAGE DEVELOPMENT; MODIFY DEVELOPMENT AGREEMENT

Planner Spencer presented the following staff report:

The Heritage Village development is located south of 1130 South and north of 1400 South between 1050 West and Turf Farm Road. The development includes ninety eight (98) residential units designed to accommodate active adult or retirement living and a small portion of commercial property along Turf Farm Road. As approved, the development contains thirty (30) single family detached dwellings and thirty four (34) two-family attached residential structures for a total of ninety eight (98) units. The westernmost portion of the property is zoned S-1, Special Highway Service Zone which would allow a variety of commercial uses to locate along the frontage of Turf Farm Road as the area further develops. Although the site is primarily undeveloped, three (3) dwellings and the project clubhouse have been constructed on the development site.

The applicant, Curtis Cerenzie, is requesting approval from the City Council to amend Plat A and Plat B of the Heritage Village development and modify the development agreement for the project. The plat amendments include a request to decrease the overall density of the project by five (5) units and to separate the two-family attached residential structures to

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allow exclusively single family detached dwellings in the development. Furthermore, the applicant is requesting various changes to the development agreement.

If the City Council is supportive of the request, there are a few technical issues that will need to be addressed by the applicant. Staff would suggest that the following conditions accompany the request for a plat amendment.

1. Portions of Plat A have been improved with utilities and roadway improvements. In conjunction with development approval, the applicant is responsible to provide separate utility services to each dwelling unit. Therefore, if reconfiguration of the building pads result in a need to install additional facilities or relocate existing services, the applicant will need to complete these improvements accordingly consistent with the design guidelines and standard specifications of Payson City and at the expense of the applicant.
2. The revised Final Plats will need to be prepared consistent with the requirements of Chapter 20.29 of the Subdivision Ordinance. In particular, the plats will need to indicate all notes, dedicatory information, and other items included on the previously recorded plats. Furthermore, in conjunction with the recordation of the revised Final Plats, the project CC&R's, development agreement and any other development restrictions imposed by the City Council will need to be re-recorded against the revised plats.
3. Approval of the plat amendment does not grant modification or waiver of development requirements originally imposed by the City Council with the approval of Plats A-C of the Heritage Village development.

Staff would suggest the proposed amendments are minor in nature and should have little effect on the intended use of the property.

Councilmember Hancock asked for clarification on the legal issues for 55 and older and Planner Spencer said there could be 20% of the residents that would not have to be 55 years or older.

Councilmember Hancock said that this development was designed for older people and not for example to trip over tricycles.

Byron Bashnon representing Curtis Cerenzie explained that their intent is not to sell to someone under 55 but they need to uphold the HOPA law and not discriminate. Sometimes we just have to use common sense, there is a lady that is a 52 year old widow, has to work and wants to live in Payson and fits all the criteria but is 3 years to young, so we wouldn't want to have to turn people like that away. As far as tricycles, the 55 and older will always have grandkids visiting. They would love to keep it to as many 55+ as they can get and even keep it to 5 or 10%. He outlined the different proposed elevations and said they would mix them up so everything didn't look the same.

Councilmember Hancock wanted to make sure that we have it what we envisioned it to be and no more than 20% of the residents under 55.

Councilmember Hancock asked what the approximate price of these homes would be and Mr. Bashnon said it would be around \$260,000.

MOTION by Councilmember Hardy to approve the proposed Plat Amendment and Development Agreement for Heritage Village as presented finding that it meets the development goals of the city. Motion seconded by Councilmember Ford. Voting aye: Councilmembers: Ford, Hancock, Hardy, and Phillips. Motion carries.

**ADOPTION OF THE NEBO LOOP NATIONAL SCENIC BYWAY CORRIDOR MANAGEMENT PLAN UPDATE**  
Planner Spencer presented the following information:

On February 15, 2012, the City Council moved to enter into an agreement with Fehr and Peers to complete an update of the Corridor Management Plan (CMP) for the Nebo Loop National Scenic Byway. Over the past year, the byway partners have been working with the consultants to strengthen the CMP document, identify necessary improvements to enhance the byway corridor, and maintain the designation as a National Scenic Byway. Throughout this process, the consultants have engaged the public by maintaining a website ([www.mtneboscenicbyway.com](http://www.mtneboscenicbyway.com)), sending mailers to property owners and stakeholders, and conducting open houses. Most recently, the public was invited to attend open houses in Nephi and Payson to provide comment on the final document.

The consultants have completed the tasks outlined in the scope of work included in the Consultant Agreement. She presented what is included in the Plan.

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To finalize this project, staff is requesting the City Council approve the update to the Corridor Management Plan for the Nebo Loop National Scenic Byway and complete the adoption by resolution. The CMP Update will also be considered by the Utah County Commission, Juab County Commission, Nephi City, and the U.S. Forest Service.

MOTION by Councilmember Ford to approve Resolution 05-15-13 for the Nebo Loop Plan Update and authorize Mayor to sign. Motion seconded by Councilmember Hardy. Motion carries.

### AMENDED INTERLOCAL COOPERATION AGREEMENT FOR ELECTRIC SERVICES BETWEEN SESD AND PAYSON CITY

Manager Tuckett presented the an amended Interlocal Cooperation Agreement for Electric Service between SESD and Payson City. This amended agreement allows the two entities to continue to work together without the necessity of have a full merger. The stated intent of the Interlocal agreement “that this Agreement shall be a basis upon which the parties intend to proceed to establish a complete integration of their respective resources and responsibilities to provide Services to all of their customers and residents.”

Until such time and we decide to integrate our systems, we can continue to work together. We are also working on getting an appraisal for the amount we owe them for the annexations since 2005.

Councilmember Ford wondered about working towards integration but taking ½ step away from that. She said that if something comes up and we decide this isn’t going to work out is their verbiage to get out of the integration part. Manager Tuckett said there is a provision in here for termination.

Councilmember Hardy explained that the part added about us purchasing something together will still have to come back to the Council to approve a new separate agreement for that project.

Attorney Sorenson said it is a compromised agreement between the two parties. Councilmember Hardy said he heard the Council say to go slow and get some experience before moving towards a merger and he feels this is what the agreement does.

MOTION by Councilmember Ford to approve the Amended Interlocal Cooperation Agreement for Electric Services between SESD and Payson City with the changes of the dates and the name of the SESD secretary, and direct Mayor Moore to sign. Motion seconded by Councilmember Phillips. Motion carries.

### LOCAL CONSENT FOR TOUR OF UTAH EVENT

Planner Spencer explained that the Utah Cycling Partnership (dba Tour of Utah) is requesting consent from the Payson City Council to submit an application to the Alcoholic Beverage Control Commission to allow alcoholic beverages to be furnished in the VIP/Hospitality area for Stage 3 of the Tour of Utah cycling event.

Section 15.2.4.9 of Title 15, Open Space, Parks and Recreation of the Payson City Municipal Code prohibits the possession or consumption of alcoholic beverages within parks or other public property, except as provided by state statute or city ordinance. In accordance with § 32B-9-201 of Utah Code Annotated, the city may provide local consent for a single event permit.

Staff would recommend the City Council grant approval of a single event permit for the Tour of Utah and authorize the Mayor to sign the local consent form. The relevant sections of Utah Code and the local consent form are attached hereto.

MOTION by Councilmember Hancock to approve the Local Consent for Tour of Utah Event Permit. Motion seconded by Councilmember Phillips. Motion carries.

### DISCUSSION REGARDING MARKETING STRATEGY FOR PAYSON CITY

Manager Tuckett presented what the Council had previously approved for sponsorships. He said that as Janeen and Karl have been out marketing to sponsor our events, there have been some businesses that are willing to be a “Diamond” Sponsor but would like to be noted as sponsors for both events Salmon Supper and Onion Days. They suggest allowing it but limiting that to 4 diamond sponsors.

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MOTION by Councilmember to Hardy to approve the sponsorships as outlined. Motion seconded by Councilmember Ford. Motion carries.

Manager Tuckett presented the current Salmon Supper logo and then a new one that Janeen is suggesting.

MOTION by Councilmember Ford to allow the new design for the Salmon Supper logo. Motion seconded by Councilmember Phillips. Motion carries.

### ADJOURN TO CLOSED SESSION

MOTION by Councilmember Hardy to adjourn to Closed Session to discuss the character or professional competency of an individual. Motion seconded by Councilmember Hancock. Motion carries.

Council adjourned to Closed Session at 8:35 p.m.

### RECONVENE

Council reconvened at 9:17 p.m.

### ADJOURN

MOTION by Councilmember Ford to adjourn. Motion seconded by Councilmember Hancock. Motion carries.

Council adjourned at 9:18 p.m.